

**UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION**

IN RE:	)	Case No.: 10-10652
	)	Chapter 11
PAYNES KNOB, LLC	)	
	)	
<u>Debtor(s)</u>	)	

**MOTION FOR AN ORDER DECLARING THE DEBTOR  
A SINGLE ASSET REAL ESTATE BUSINESS**

The Office of the Bankruptcy Administrator for the Western District of North Carolina ("Bankruptcy Administrator") moves the Court for an Order deeming Paynes Knob, LLC (the "Debtor") to be a single asset real estate business as defined in 11 U.S.C. § 101(51B) and declaring the provisions of 11 U.S.C. § 362(d)(3) to be applicable to the Debtor and says:

1. This is a Chapter 11 proceeding in which a voluntary petition was filed on June 4, 2010.
2. Under Nature of Business on the Debtor's petition, the Debtor checked "Other."
3. On Schedule A of the Debtor's petition, the description and location of property is as follows:

*472 Shope Creek Road, Asheville, Buncombe County, NC*

*102.69 acres of commercial real estate with some improvement and significant groundwork performed. The property is described in a survey for Payne's Knob, LLC by Wallace S. McAbee PLS dated October 29, 2007 recorded in Plat Book 116, Page 3 and being also all of the same property described in a Deed of Trust from Payne's Knob, LLC to Miller Marshall Roth, PC Trustee for Emory Electric, Inc. recorded May 4, 2009 in Record Book 4677, Page 939, Buncombe County Public Registry*

4. The Debtor scheduled no personal property.
5. The only creditors scheduled are secured creditors and are
  - a. Bank of Asheville, 1<sup>st</sup> DOT with a claim of \$850,000.00
  - b. Buncombe County Tax Office, tax lien with a claim of \$5,010.27

- c. Emory Electric, Inc, 2<sup>nd</sup> DOT with a claim of \$485,409.72
6. The Bankruptcy Administrator moves the Court to grant the Motion and to declare the Debtor a single asset real estate business under 11 U.S.C. § 101(51B) and to declare 11 U.S.C 362(d)(3) applicable to the Debtor.
7. 11 U.S.C. § 101(51B) states
- The term "single asset real estate" means real property constituting a single property or project, other than residential real property with fewer than 4 residential units, which generates substantially all of the gross income of a debtor who is not a family farmer and on which no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental*
8. On question one of the Debtor's Statement of Financial Affairs "Income from Employment or Operation of Business", the Debtor listed \$0.00 for the years 2008, 2009, and 2010. Assuming the Debtor did earn income in any of these years, upon information and belief, it would have had to be from the real property listed on Schedule A as the Debtor scheduled no other assets.
9. The Court should grant the Motion and declare that the Debtor is a single asset real estate business because the Debtor's only asset consists of a single piece of real estate, any income the Debtor generates would have to be from this single piece of real estate, as it has no other assets and that the Debtor's sole business is the operation of this single piece of real property.

Wherefore, the undersigned moves the Court to Order that the Debtor is a single asset real estate business, that 11 U.S.C. § 362(d)(3) is applicable to the Debtor and for such other and further relief as the Court deems just and proper.

Dated: June 17, 2010.

/s/Alexandria P. Kenny  
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**CERTIFICATE OF SERVICE**

The undersigned certifies that the pleading(s) or paper(s) to which this Certificate is affixed was served upon the party(s) to this action listed below by depositing a copy of the same, enclosed in a first-class postpaid, properly addressed wrapper, in a Post Office or official depository under the exclusive care and custody of the United States Postal Service and/or by means of the Electronic Filing System of the Bankruptcy Court on June 17, 2010.

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